Reserved Judgement

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Misc. Writ Petition (M/S) No. 2515 of 2001
Old CMWP No. 41991 of 1998

Mahesh Singh Shahi, S/O Sir Devi Singh,
R/O village Dotal Gaon,
Post Bagwali Pokhar, Tehsil Ranikhet,
District Almora.

… **Petitioner.**

Versus

1. Commissioner, Kumaon Division,
   Nainital,
2. Gopal Singh S/O Sri Keshar Singh
   R/O village Bansuli Sera, Post Bagwali Pokhar
   Tehsil Ranikhet, District Almora .
3. Pradhan, Gram Panchayat Dotalgaon,
   Post Bagwali Pokhar, Tehsil Ranikhet, District Almora.

… **Respondents.**

Sri C.D.Bahuguna, Advocate, learned counsel for the Petitioner.
Sri Atul Basal, Leaned Standing Counsel for the respondent no. 1.
None appeared on behalf of respondent nos. 2 & 3.

Date: February 15, 2006.

(Hon'ble B.S. Verma, J.)

By means of this writ petition, the petitioner has challenged the impugned order dated 17-11-1998, passed by the Commissioner, Kumaun Division, Nainital, in Appeal No. 95 of 1997-98, Gopal Singh Vs. Joint Magistrate, Ranikhet and another, whereby the order dated 8-9-1998 passed by the Joint Magistrate, Ranikhet, Almora was set aside, on the ground that the Commissioner does not have the jurisdiction to entertain the appeal and to pass the impugned order.

2. Brief facts giving rise to this writ petition are that respondent no.2 Gopal Singh was granted licence to run the fair price shop and he used to run the shop of scheduled commodities in village Bansuli Shera, Post Bagwali Pokhar, Tehsil Ranikhet, District Almora and certain villages were attached to his shop including villages Dotal Gaon and Pait Saal. Subsequently, complaints were filed against respondent no.2 on a number of

occasions by the ration card holders of village Dotal Gaon and Pait Saal before the district authorities to the effect that the respondent no.2 was committing irregularities in the stock of scheduled commodities and the interest of the villagers was being adversely affected. It was alleged that the dealer was not purchasing the specified food-grains from the depot of District Supply Office and was not distributing it to the card-holders of the said villages. Consequently, a meeting was held on 6.1.1996 by Gram Panchayat Dotal Gaon in which resolution was passed regarding acute problem of non-distribution of food grain commodities by the respondent no.2 and a copy of the said resolution was sent to the Sub Divisional Magistrate Ranikhet with a prayer that the licence of respondent no.2 be cancelled and the village Dotal Gaon be attached to another fair price shop held by Sri Damodar of Bagwali Pokhar. On 6.5.1997, the Pradhan of Gram Panchayat Dotalgaon submitted a representation to the District Magistrate Almora stating therein the irregularities being committed by the respondent no.2 and request was made for taking action against him. The representation was countersigned by the villagers. Again, on 11.12.1997, the Pradhan concerned sent a letter to the Deputy District Magistrate Ranikhet apprising him the irregularities and misbehaviour and attitude of the distributor, the respondent no. 2 and it was specifically stated therein that the foodgrains were not being supplied to the ration card holders of village Dotal Gaon vide Annexure 4 to this writ petition. Again on 22.3.98 a meeting was hold by the Pradhan of the Gaon Sabha on the same issue. Several other resolutions were passed by the members of Gram Panchayat Dotal Gaon on the same issue but to no avail. Ultimately, a delegation of Gram Panchayat Dotal Gaon met the District Magistrate and as per suggestion of the District Magistrate, the petitioner was nominated for running a fair price shop. The Block Development Officer Dwarahat sent a letter to the Joint Magistrate Ranikhet on 19-6-1998 against the respondent no.2 stating therein that he was not distributing the scheduled commodities to the card holders therefore the Block Development Officer concerned

temporarily assigned the distribution work to another retailer Hari Sharan Sharma and accordingly directed the Assistant Food Grains Inspector Bagwali Pokhar. As a result of regular complaints made against the respondent no.2, by the villagers of Dotal Gaon and Pait Saal, the Joint Magistrate Ranikhet by his order dated 13.7.1998 imposed a fine of Rs. 250/- on respondent no. 2. Despite imposition of fine, the respondent no.2 failed to regularize the distribution of food grains to the villagers concerned. Lateron, another representation was sent to the Joint Magistrate Ranikhet with a request that the petitioner be allotted the ration shop in place of respondent no.2. Thereafter the District Magistrate Almora by his letter dated 19-8-1998 addressed to the Joint Magistrate Ranikhet asked him to allot the ration shop of village Dotal Gaon in the name of the petitioner. Ultimately, the Joint Magistrate Ranikhet by his order dated 8-9-1998 cancelled the licence of the respondent no.2 in terms of condition no. 16 of the licence and in his place allotted the fair price shop in favour of the petitioner on the basis of resolution passed by the Gaon Sabha Dotal Gaon on 28-6-1998. Aggrieved by the said order passed by the Joint Magistrate Ranikhet, the respondent no. 2 went up in appeal before the Commissioner Kumaon Division Nainital, which was allowed vide order dated 17-11-1998 and the order dated 8-9-1998 was set aside.

3. I have heard the submissions made by Sri C.D. Bahuguna, learned counsel for the petitioner and have carefully gone through the entire material including the orders passed by the Joint Magistrate Ranikhet and the Commissioner Kumaun Division.

4. At the outset it may be mentioned that from a bare perusal of the order dated 17-11-1998 passed by the commissioner, Kumaun Division, it is evident that the petitioner had contested the appeal and participated in the proceedings. The Commissioner of the Division is undisputedly the appellate authority in respect of the

orders passed by the Joint Magistrate. There is no jurisdictional error in the instant case.

5. From a bare perusal of the order passed by the Joint Magistrate Ranikhet it can be clearly seen that no opportunity of hearing was afforded to the respondent no.2. It is settled law that sufficient opportunity should be given to a person against whom any adverse order is passed and if an order is made without affording reasonable opportunity to the person concerned, it is against the principle of natural justice. The material placed on record does not disclose that the respondent no.2 was ever given show cause notice before passing the order of cancellation of licence against him. The Commissioner has rightly set aside the order dated 8-9-1998 holding the same to be erroneous. In my view learned Commissioner has not committed any illegality or manifest error or jurisdictional error in setting aside the impugned order dated 8-9-1998 passed by the Joint Magistrate Ranikhet.

6. For the reasons aforesaid, the writ petition is devoid of merit and must fail.

7. The writ petition is hereby dismissed. No order as to costs.

(B.S. Verma, J.)

RCP